

CURRENT ISSUES INFORMATION SHEET 2002/5

RECENT COLLECTIONS ACT 1966 AND COLLECTIONS REGULATION 1998 AMENDMENTS

The Collections Act

The *Collections Act 1966* has been amended in that:

- ◆ A wider range of persons are permitted as auditors in line with the Associations Incorporation Act. A member of the National Institute of Accountants who has completed certain specified study (other than an associate) is now included, as well as an auditor registered under the *Corporations Act 2001*.
- ◆ The provisions in section 29 are amended to simplify the constitutional provisions that a charity is required to have under the Act. A charity registered under the Collections Act is now only required to provide that income and property of the charity or association must be applied in promotion of its objects, not distributed among members and dividends must not be paid to members.

The Collections Regulations

The fees under the Regulations altered on 3 December 2001. Inspecting a document now costs \$4.50 and a copy of a document is \$2.10 a page.

A number of amendments were made to the regulations on 21 December 2001 by Collections Amendment Regulation (No.1) 2001 SL No. 290. These amendments include:

- ◆ Amendment of the registration process in respect to public advertising of the application;
- ◆ The objection process to registration under the Act;
- ◆ Repeal of the constitutional requirements required by the Regulations (as opposed to those in the Act itself) for a charity under the Act;
- ◆ Alteration of the investment rules for charities;
- ◆ Annual accounts filing extension and transitional rules; and
- ◆ Abolition of the requirement that an income and expenditure account, balance sheet and a return of office bearers must be in the approved form.

Public Advertising and Objections

Sections 3 and 7 of the Regulations are amended in respect of advertising of the application for registration under the Act and objection to applications. The notice must now state the following:

- ◆ That the association has applied for registration as a charity;
- ◆ A person may object to the registration by filing an objection in the approved form with the Minister by the date stated in the notice; and
- ◆ Within 7 days after filing an objection with the Minister, the person must serve a copy of the objection on the association at the address for service stated in the notice.

The time for objections to be filed with the Minister is now extended to within 1 month after the last public notice is published, not the day of the filing of the application with the Minister.

Repeal of Constitutional requirements

The provision in the Regulation requiring additional matters to be dealt with in an applicant's constitution and also Schedule 2 to the Regulations is abolished. This will make registration under the Act a less burdensome procedure. It may also prompt organisations previously registered under the Act to examine their constitutional provisions. Note however that section 29(2) of the Act requires the approval of the Chief Executive of the Department before the amendment is put to a meeting of the organisation. Further, once approval is given and the appropriate resolutions are passed, certified copies of the approved resolutions need to be filed with the Department.

Investment rules

The Collections Act in the past required those registered under the Act to invest in one of the specified ways set out in the Trusts Act. This restricted those registered under the Act to very conservative investment products with little chance of developing a balanced portfolio having some investments with potential capital growth.

In 1999, the Trusts Act 1973 was amended to move the law from a situation where some trustees were required to invest trust assets in specified ways to a more flexible rule where trustees were required to act prudently in their investment. Section 33 of the Collections Act was amended at the time of the Trusts Act amendments to reflect these changes. However, the amendment did not make it clear how exactly the new Trusts Act provisions were to apply to those organisations registered under the Collections Act.

The amendments to the Regulations now make it clear that any organisation registered under the Act will be treated as a "trustee" for the purposes of investment and its assets will be treated as "trust funds". The standard required when an organisation exercises an investment power is:

- (a) if the profession, business or employment of a member of the governing body of the charity or association is, or includes, acting as a trustee or investing money for other persons—exercise the care, diligence and skill a prudent person engaged in that profession, business or employment would exercise in managing the affairs of other persons; or
- (b) if the profession, business or employment of a member of the governing body of the charity or association is not, or does not include, acting as a trustee or investing money for other persons— exercise the care, diligence and skill a prudent person of business would exercise in managing the affairs of other persons.

Annual accounts

The Regulations have been amended to extend the time for filing of annual **financial** returns from 3 months after the end of each financial year to within 7 months of the end of the financial year. However, a copy of the **annual report** must be made within 3 months of the end of the financial year as the provisions in Schedule 3 item 12 remain.

Transitional provisions in section 47 of the Regulations mean that the new extended filing period will **not** apply to organisations that have the end of their financial year more than three months before the 21 December 2001 (commencement of the regulation provision). In other words, the new provisions only apply to an organisation whose financial year ends after 21 September 2001.

Abolition of approved form

The Regulations now do not contain the requirement that an income and expenditure account, balance sheet and a return of office bearers must be in the approved form.

Future Developments

The Mental Health Act 2000 has many provisions that have not yet commenced. One provision of the Mental Health Act will remove the reference to the Mental Health Act 1974 (the old Act) from Section 35A (9)(a) of the Collections Act. It is expected to commence in early 2002.

Collection Act Statistics

The Department currently has 792 charities and 2,873 community organisations registered under the Collections Act as at 31 December 2001.

Further Resources:

Progress of Queensland legislation <http://www.legislation.qld.gov.au>

Department of Fair Trading <http://www.consumer.qld.gov.au>

Centre of Philanthropy and Nonprofit Studies, Queensland University of Technology <http://cpns.bus.qut.edu.au>

This Current Information Sheet was issued on 14 January 2002. Events, policy and laws alter rapidly and you should take independent advice before acting on any matter raised in this publication. The source of this document is <http://cpns.bus.qut.edu.au>